

### **REMARKS/ARGUMENTS**

Claims 1-7, 9-31 and 33-40 are pending. Claims 8 and 32 have been cancelled herein. Claims 1 and 29 have been amended herein to include the limitations of cancelled claims 8 and 29, respectively. Claims 4 and 13 have been amended herein to delete inadvertent reference numbers and not to avoid any reference. No new matter has been added with this Amendment. In the Office Action, the Examiner rejected claims 1-40 on various grounds. The Applicants respond to each ground of rejection as subsequently recited herein. Reconsideration of this Application and entry of this Amendment is respectfully requested.

#### **Double Patenting Rejections**

Claims 1-6 and 8-40 were rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-36 of US 6918929 to Udipi et al., in view of WO 03/022323 A1 to Pacetti.

Claim 7 was rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-36 of US 6,918,929 to Udipi et al., in view of WO 03/022323 A1 to Pacetti and in further view of US 4,157,960 to Change et al.

The Applicants respectfully traverse these rejections. However, in an effort to move the prosecution of the present application along to allowance, the Applicants have filed a terminal disclaimer in compliance with 37 CFR 1.321, attached. Withdrawal of the rejection of claims 1-40 on the ground of non-statutory obviousness-type double patenting is respectfully requested.

#### **35 U.S.C. §102 Rejections**

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the . . . claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Thus, to warrant the §102(c) rejection, the references cited by the Examiner must show each and every limitation of the claims in complete detail. The Applicants respectfully assert that the cited references fail to do so.

A. Claims 1, 2, 6, 12, 14, 15 19, 29 and 33-36 were rejected under 35 U.S.C. §102(c) as being anticipated by U.S. Patent Pub No. 2003/0235602 to Schwartz (the Schwartz publication).

The Applicants respectfully assert that the Schwartz publication fails to include each and every element of the Applicants' invention as claimed, as required to maintain a rejection under 35 U.S.C. §102(e). *See* MPEP 2131. The Applicants assert that the Schwartz publication fails to disclose, teach, or suggest

1) a system for treating a vascular condition, comprising a catheter; a stent coupled to the catheter, the stent including a stent framework; a polymeric coating disposed on the stent framework, wherein the polymeric coating comprises a blended matrix of a polysulfone and a styrenic block copolymer, wherein the styrenic block copolymer has a molecular weight between 200 Daltons and 200,000 Daltons; and a therapeutic agent in contact with the blended matrix, as recited in amended claim 1; and

2) a drug-polymer coated stent, comprising a stent framework; and a polymeric coating disposed on the stent framework, wherein the polymeric coating comprises a blended matrix of a polysulfone and a styrenic block copolymer; and a therapeutic agent contacting the polymeric coating, wherein the blended matrix comprises a first fraction of the polysulfone and a second fraction of the styrenic block copolymer based on a predetermined elution rate of the therapeutic agent, as recited in amended claim 29.

As noted above, claim 1 has been amended to incorporate the elements of claim 8 and claim 29 has been amended to incorporate the elements of claim 32. As the Examiner correctly noted, claims 8 and 32 are not anticipated by the Schwartz publication. Therefore, amended claims 1 and 29 that now include the limitations of claims 8 and 32 are not anticipated by the Schwartz publication. For at least these reasons, the Applicants request the withdrawal of the rejection of independent claims 1 and 29.

Claims 2, 6, 12, 14, 15 and 19 depend from claim 1 and include all of the limitations of that claim. Claims 33-36 depend from independent claim 29 and include all of the limitations of that claim. For at least this reason claims 2, 6, 12, 14, 15, 19 and 33-36 are allowable over the Schwartz publication. Withdrawal of the rejection of claims 1, 2, 6, 12, 14, 15 19, 29 and 33-36 under 35 U.S.C. § 102(e) is respectfully requested.

### 35 U.S.C. §103 Rejections

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references when combined must teach or suggest all the claim limitations. *See* MPEP 2143. To

establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). *See* MPEP 2143.03.

- B. Claim 7 has been rejected under 35 U.S.C. §103(a) as being unpatentable over the Schwartz publication in view of US 4,157,960 to Change et al.

The Applicants traverse this rejection. Claim 7 depends from independent claim 1 and includes all of the elements and limitations of independent claim 1 and, thus, is allowable for at least the same reasons as those stated above for claim 1. Furthermore, where an independent claim is non-obvious, any claim depending therefrom is also non-obvious. *See*, MPEP 2143. Applicants, therefore, request the withdrawal of the rejection of dependent claim 7 under § 103(a).

#### Conclusion

For the foregoing reasons, Applicants believe all the pending claims are in condition for allowance and should be passed to issue. The Commissioner is hereby authorized to charge any additional fees which may be required under 37 C.F.R. 1.17, or credit any overpayment, to Deposit Account No. 01-2525. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (707) 543-5021.

Respectfully submitted,

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